

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 09-0578

HERMAN GONZALES; FAWN LYONS; KEN
LAUDATO; LAWRENCE WALKER; GARY
MANSIKKA; GARY GALETTI; GREG WHITING;
MARVIN KRONE; RICHARD BLACK; JIM KELLY;
CHRIS SOUSLEY, and all others similarly situated,

Plaintiffs and Appellees,

v.

MONTANA POWER COMPANY;
NORTHWESTERN CORPORATION, a Delaware
Corporation; PUTMAN AND ASSOCIATES, INC., a
Montana corporation; NORTHWESTERN ENERGY;
NORTHWESTERN CORPORATION d/b/a
NORTHWESTERN CORPORATION as a reorganized
debtor, subsequent to its plan confirmation, herein after
referred to as NOR; and JOHN DOES II and III and
JOHN DOES IV thru XX,

Defendants and Appellant.

FILED

JAN 9 6 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

O R D E R

Before this Court is the Appellees' Motion for Expedited Proceedings and Suspension of the Rules and supporting affidavit of Appellees' counsel. Appellees have also filed a Motion for Suspension of the Rules and Reinvestment of Limited Jurisdiction [in the District Court]. Appellants oppose these motions.

Appellees request that we expedite our decision in this interlocutory appeal from the District Court's order certifying a class action. The Appellees also request that no extension of the briefing schedule be allowed. Finally, the Appellees also request that we reinvest the District Court with jurisdiction to determine the notification procedure for the class and to supervise discovery during the pendency of this appeal.

The underlying case was filed in Butte-Silver Bow County District Court in December 1998 and involves claims that Montana Power Company mishandled

individual workers' compensation cases. It appears that, as the case evolved, more potential claimants were discovered, and the claimants were ultimately certified as a class by the District Court on September 30, 2009. This appeal, taken pursuant to M. R. App. P. 6(3)(d), is from that order.

Basically, the Appellees argue that the appeal and our decision should be expedited because further delays in the case¹ could affect potential class members who have not received notice of their potential involvement in the District Court class action. Appellees contend that some of these potential claimants incurred their injuries three decades ago and other claimants are already dead. Appellees state that, assuming we affirm the trial court's order, the underlying case can proceed as a class action more promptly and efficiently for the benefit of the Appellees and other potential class members if we reinvest the District Court with jurisdiction to establish a class notification procedure and to supervise discovery during the pendency of this appeal and if we expedite this appeal and our decision.

Appellants object, arguing that this case involves no exigent circumstances; that it has been pending already for over 10 years; that the Appellants have cooperated in discovery but that the Appellees have failed to diligently conduct discovery; that the Appellees delayed in certifying the class; and that this appeal will likely result in reversal of the District Court's class order, contrary to Appellees' assumption that we will affirm.

Under M. R. App. P. 29(1), this Court may, discretionarily, order an expedited decision on any matter either sua sponte or for good cause shown. Having reviewed the Appellees' motion and affidavit and the Appellants' responses, we conclude that the Appellees have failed to establish good cause to suspend the rules. First, every litigant appearing before this Court desires to have an expedited determination of its case. However, expediting one case typically delays the determination of another litigant's case. Second, and more importantly, this Court is current in processing its caseload, and this appeal should not be delayed even if processed within the Court's normal case flow.

¹ The case was delayed by bankruptcy proceedings involving some of the Appellants, and other procedural matters in the District Court and Workers Compensation Court.

Third, we will not assume that the trial court's decision will be either affirmed or reversed pending our careful review of the briefs and record. Fourth, the Appellees point to no order staying discovery; indeed, the Appellees state that discovery has not closed. While the District Court has no jurisdiction to supervise it, the parties can proceed with whatever discovery they wish pending this appeal. Fifth, we already extended the briefing schedule in accordance with a written agreement of the parties; the Appellees' request to not extend the briefing schedule is, therefore, moot. Accordingly,


IT IS ORDERED that the Appellees' Motion for Expedited Proceedings and Suspension of the Rules, and Motion for Suspension of the Rules and Reinvestment of Limited Jurisdiction [in the trial court] are DENIED.

IT IS FURTHER ORDERED that the Appellees' request to not extend the briefing schedule is DENIED as MOOT.

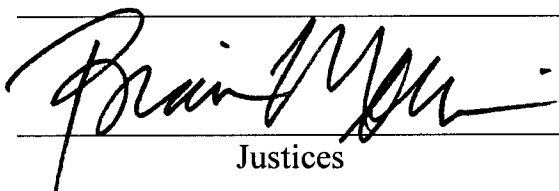
IT IS FURTHER ORDERED that, except as already extended in our December 18, 2009 Order Extending Briefing Schedule, no further extensions of the briefing schedule will be granted.

IT IS FURTHER ORDERED that the Clerk of this Court give notice of this Order to counsel of record by facsimile, followed by mail.

Dated this 5th day of January, 2010.



William Byrd
Patricia Cotto



Justices